

Official Records of Maricopa County  
Recorder Helen Purcell

When recorded, return to:

20140287000,05/02/2014 12:51,06010-56-1-1--,N  
Electronic Recording.

Ekmark & Ekmark, LLC  
6720 North Scottsdale Road, Suite 261  
Scottsdale, AZ 85253

**AMENDED AND RESTATED  
CONDOMINIUM DECLARATION  
FOR  
THE BOULDERS CASITAS,  
A CONDOMINIUM**

## TABLE OF CONTENTS

<b>ARTICLE 1</b>	<b>DEFINITIONS</b>	<b>1</b>
1.1	GENERAL DEFINITIONS	1
1.2	DEFINED TERMS	1
1.2.1	“Articles”	2
1.2.2	“Assessments”	2
1.2.3	“Assessment Lien”	2
1.2.4	“Association”	2
1.2.5	“Board of Directors”	2
1.2.6	“Bylaws”	2
1.2.7	“City”	2
1.2.8	“Common Elements”	2
1.2.9	“Common Expenses”	2
1.2.10	“Common Expense Assessment”	2
1.2.11	“Common Expense Liability”	2
1.2.12	“Condominium”	2
1.2.13	“Condominium Act”	2
1.2.14	“Condominium Documents”	2
1.2.15	“Declarant Party” or “Declarant Parties”	2
1.2.16	“Declaration”	3
1.2.17	“Dwelling”	3
1.2.18	“Easement and Operating Agreement”	3
1.2.19	“First Mortgage”	3
1.2.20	“First Mortgagee”	3
1.2.21	“Golf Course Easement Agreement”	3
1.2.22	“Improvement”	3
1.2.23	“Limited Common Elements”	3
1.2.24	“Maintenance Standard”	3
1.2.25	“Master Association”	3
1.2.26	“Master Community”	3
1.2.27	“Master Declarant”	4
1.2.28	“Master Declaration”	4
1.2.29	“Master Governing Documents”	4
1.2.30	“Member”	4
1.2.31	“Person”	4
1.2.32	“Plat”	4
1.2.33	“Recording”	4
1.2.34	“Reserve Contribution”	4
1.2.35	“Rules”	4
1.2.36	“Special Assessment”	4
1.2.37	“Unit”	4
1.2.38	“Unit Owner”	4
1.2.39	“Visible From Neighboring Property”	5

**ARTICLE 2 SUBMISSION OF PROPERTY; UNIT BOUNDARIES; ALLOCATION OF PERCENTAGE INTERESTS, VOTES AND COMMON EXPENSE LIABILITIES .....5**

2.1 SUBMISSION OF PROPERTY ..... 5  
2.2 NAME OF CONDOMINIUM ..... 5  
2.3 NAME OF ASSOCIATION ..... 5  
2.4 IDENTIFYING NUMBERS OF UNITS ..... 5  
2.5 UNIT BOUNDARIES ..... 5  
2.6 ALLOCATION OF COMMON ELEMENT INTEREST AND COMMON EXPENSE LIABILITIES ..... 5  
2.7 ALLOCATION OF VOTES IN THE ASSOCIATION ..... 6  
2.8 ALLOCATION OF LIMITED COMMON ELEMENTS ..... 6

**ARTICLE 3 EASEMENTS .....6**

3.1 UTILITY EASEMENT ..... 6  
3.2 EASEMENTS FOR INGRESS, EGRESS AND NATURE TRAIL ..... 6  
3.3 EXCLUSIVE PARKING EASEMENT ..... 8  
3.4 UNIT OWNERS’ EASEMENTS OF ENJOYMENT ..... 8  
3.5 EASEMENT OVER COMMON ELEMENTS AND UNITS IN FAVOR OF THE ASSOCIATION ..... 9  
3.6 EASEMENT OVER LIMITED COMMON ELEMENTS IN FAVOR OF UNIT OWNERS ..... 9  
3.7 EASEMENT FOR SUPPORT ..... 10  
3.8 EASEMENT FOR UNINTENDED ENCROACHMENTS ..... 10  
3.9 EASEMENT RIGHTS AND OTHER RIGHTS ..... 10

**ARTICLE 4 USE AND OCCUPANCY RESTRICTIONS .....10**

4.1 RESTRICTIONS IMPOSED BY MASTER GOVERNING DOCUMENTS; OBLIGATION TO OBTAIN APPROVALS ... 10  
4.2 RESIDENTIAL USE ..... 11  
4.3 NUISANCES; CONSTRUCTION ACTIVITIES ..... 11  
4.4 ANTENNAS ..... 12  
4.5 FLAGS AND FLAGPOLES ..... 12  
4.6 UTILITY SERVICE ..... 12  
4.7 IMPROVEMENTS AND ALTERATIONS ..... 12  
4.8 TRASH CONTAINERS AND COLLECTION; OPEN FIRES ..... 15  
4.9 MACHINERY AND EQUIPMENT ..... 15  
4.10 ANIMALS ..... 15  
4.11 TEMPORARY OCCUPANCY ..... 16  
4.12 CLOTHES DRYING FACILITIES ..... 16  
4.13 MINERAL EXPLORATION ..... 16  
4.14 DISEASES AND INSECTS; SAFE CONDITION ..... 16  
4.15 TRUCKS, TRAILERS, CAMPERS AND BOATS ..... 16  
4.16 MOTOR VEHICLES ..... 17  
4.17 TOWING OF VEHICLES ..... 17  
4.18 GARAGES ..... 17  
4.19 SIGNS ..... 17  
4.20 VIOLATION OF LAW OR INSURANCE ..... 17  
4.21 NUISANCES AND OFFENSIVE ACTIVITY ..... 18  
4.22 WINDOW COVERINGS ..... 18  
4.23 MECHANICAL EQUIPMENT ..... 18

4.24	BASKETBALL GOALS AND BACKBOARDS. ....	18
4.25	LIGHTING. ....	18
4.26	RESTRICTION ON FURTHER SUBDIVISION, PROPERTY RESTRICTIONS AND REZONING. ....	18
4.27	DRAINAGE. ....	19
4.28	NATURAL AREA OPEN SPACE. ....	19
4.29	LEASING OF UNITS. ....	19
4.30	SOLAR DEVICES. ....	20
4.31	VARIANCES. ....	20
<b>ARTICLE 5 MAINTENANCE AND REPAIR OF COMMON ELEMENTS AND UNITS.....</b>		<b>20</b>
5.1	DUTIES OF THE ASSOCIATION. ....	20
5.2	DUTY TO INSPECT. ....	21
5.2.1	<i>Purpose of Inspections.</i> ....	21
5.2.2	<i>Experts and Consultants.</i> .....	22
5.3	DUTIES OF UNIT OWNERS. ....	22
5.4	REPAIR OR RESTORATION NECESSITATED BY UNIT OWNER. ....	23
5.5	UNIT OWNER’S FAILURE TO MAINTAIN. ....	23
<b>ARTICLE 6 THE ASSOCIATION; RIGHTS AND DUTIES, MEMBERSHIP .....</b>		<b>23</b>
6.1	RIGHTS, POWERS AND DUTIES OF THE ASSOCIATION. ....	23
6.2	DIRECTORS AND OFFICERS. ....	24
6.3	RULES. ....	24
6.4	COMPOSITION OF MEMBERS. ....	24
6.5	LIMITATION OF LIABILITY. ....	24
6.5.1	<i>Personal Liability.</i> ....	24
6.5.2	<i>Director Liability.</i> .....	24
6.6	IMPLIED RIGHTS. ....	24
6.7	VOTING RIGHTS. ....	25
6.8	VOTING PROCEDURES. ....	25
6.9	TRANSFER OF MEMBERSHIP. ....	25
6.10	SUSPENSION OF VOTING RIGHTS. ....	25
6.11	CONVEYANCE OR ENCUMBRANCE OF COMMON ELEMENTS. ....	25
<b>ARTICLE 7 ASSESSMENTS.....</b>		<b>26</b>
7.1	PREPARATION OF BUDGET. ....	26
7.2	COMMON EXPENSE ASSESSMENT. ....	27
7.3	SPECIAL ASSESSMENTS. ....	28
7.4	EFFECT OF NONPAYMENT OF ASSESSMENTS; REMEDIES OF THE ASSOCIATION. ....	28
7.5	SUBORDINATION OF ASSESSMENT LIEN TO MORTGAGES. ....	28
7.6	MONETARY PENALTIES; OTHER FEES AND CHARGES. ....	29
7.7	EXEMPTION OF UNIT OWNER. ....	29
7.8	CERTIFICATE OF PAYMENT. ....	29
7.9	NO OFFSETS. ....	29
7.10	WORKING CAPITAL FEE. ....	29
7.11	RESERVES. ....	30
7.12	SURPLUS FUNDS. ....	30

7.13	TRANSFER FEE.....	31
<b>ARTICLE 8 INSURANCE.....</b>		<b>31</b>
8.1	SCOPE OF COVERAGE.....	31
8.2	FIDELITY INSURANCE.....	32
8.3	PAYMENT OF PREMIUMS AND DEDUCTIBLES.....	33
8.4	INSURANCE REVIEW.....	33
8.5	INSURANCE REQUIRED OF UNIT OWNERS.....	34
8.6	PAYMENT OF INSURANCE PROCEEDS.....	34
8.7	CERTIFICATE OF INSURANCE.....	34
<b>ARTICLE 9 DESTRUCTION OF IMPROVEMENTS.....</b>		<b>35</b>
9.1	AUTOMATIC RECONSTRUCTION.....	35
9.2	DETERMINATION NOT TO RECONSTRUCT WITHOUT TERMINATION.....	35
9.3	DISTRIBUTION OF INSURANCE PROCEEDS IN THE EVENT OF TERMINATION OF THE CONDOMINIUM.....	35
9.4	NEGOTIATIONS WITH INSURER.....	35
9.5	DESTRUCTION OF UNITS.....	36
9.6	PRIORITY.....	36
<b>ARTICLE 10 EMINENT DOMAIN.....</b>		<b>36</b>
10.1	TOTAL TAKING OF A UNIT.....	36
10.2	PARTIAL TAKING OF A UNIT.....	36
10.3	TAKING OF COMMON ELEMENTS.....	36
10.4	TAKING OF ENTIRE CONDOMINIUM.....	37
10.5	PRIORITY AND POWER OF ATTORNEY.....	37
<b>ARTICLE 11 GENERAL PROVISIONS.....</b>		<b>37</b>
11.1	ENFORCEMENT.....	37
11.1.1	<i>Notice of Violation</i> .....	37
11.2	COSTS OF ENFORCEMENT.....	38
11.3	SEVERABILITY.....	38
11.4	DURATION AND TERMINATION.....	38
11.5	AMENDMENT.....	38
11.6	REMEDIES CUMULATIVE.....	38
11.7	NOTICES.....	38
11.8	BINDING EFFECT.....	39
11.9	GENDER.....	39
11.10	TOPIC HEADINGS.....	39
11.11	SURVIVAL OF LIABILITY.....	39
11.12	CONSTRUCTION.....	40
11.13	JOINT AND SEVERAL LIABILITY.....	40
11.14	GUESTS AND TENANTS.....	40
11.15	ATTORNEYS' FEES IN ADMINISTRATIVE ACTIONS.....	40
11.16	NUMBER OF DAYS.....	40
11.17	MASTER ASSOCIATION.....	40
11.18	VIEWS NOT GUARANTEED.....	41

11.19	DISCLAIMERS REGARDING THE BOULDERS RESORT, THE BOULDERS CLUB AND GOLF COURSES.....	41
11.19.1	<i>Resort Use and Access</i> .....	41
11.19.2	<i>The Boulders Club</i> .....	41
11.19.3	<i>Golf Course</i> .....	42
11.20	DISPUTE NOTIFICATION AND RESOLUTION PROCEDURE.....	42
11.20.1	<i>Notice</i> .....	43
11.20.2	<i>Right to Inspect and Right to Corrective Action</i> .....	43
11.20.3	<i>No Additional Obligations; Irrevocability and Waiver of Right</i> .....	43
11.20.4	<i>Mediation</i> .....	43
(i)	Position Memoranda: Pre-Mediation Conference.....	44
(ii)	Conduct of Mediation.....	44
(iii)	Exclusion Agreement.....	44
(iv)	Parties Permitted at Sessions.....	44
(v)	Expenses.....	44
11.20.5	<i>Arbitration</i> .....	45
(i)	Place.....	45
(ii)	Arbitration.....	45
(iii)	Commencement and Timing of Proceeding.....	45
(iv)	Pre-hearing Conferences.....	45
(v)	Discovery.....	45
(vi)	Motions.....	46
(vii)	Arbitration Award.....	46
11.20.6	<i>WAIVERS</i> .....	46
11.20.7	<i>Statutes of Limitation or Repose</i> .....	47
11.20.8	<i>Required Consent of Declarant to Modify</i> .....	47
11.21	REQUIRED CONSENT OF UNIT OWNERS FOR LEGAL ACTION.....	47
11.21.1	<i>Notice of Unit Owners</i> .....	47
11.21.2	<i>Notification to Prospective Purchasers</i> .....	47
<b>EXHIBIT A</b>	<b>LEGAL DESCRIPTION OF PROPERTY SUBMITTED TO CONDOMINIUM.....</b>	<b>50</b>

**AMENDED AND RESTATED  
CONDOMINIUM DECLARATION  
FOR  
THE BOULDERS CASITAS,  
A CONDOMINIUM**

This Amended and Restated Condominium Declaration for The Boulders Casitas, a condominium, is made on the day hereinafter set forth by The Boulders Casitas Condominium Association, an Arizona nonprofit corporation (the "Association").

**RECITALS**

A. Cachet-Boulders, LLC, an Arizona limited liability company ("Declarant") recorded a Condominium Declaration for The Boulders Casitas, a condominium on February 11, 2005 at Recording No. 2005-0176228, official records of Maricopa County, Arizona Recorder ("Original Declaration").

B. The Original Declaration governs that certain parcel of real property located in Maricopa County, Arizona, described and depicted on Exhibit "A" attached hereto (the "Property"). The Property, together with all improvements and appurtenances thereto will be referred to herein as the "Project."

C. The Association, by and through the Owners, wishes to amend and restate the Original Declaration in its entirety as set forth herein.

D. Therefore, the Association hereby declares that the Property is and shall be held, conveyed, encumbered, leased and used subject to the following covenants, conditions, restrictions, uses, limitations, obligations, easements, equitable servitudes, charges and liens, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property. The covenants, conditions, restrictions, uses, limitations, obligations, easements, equitable servitudes, charges and liens set forth herein shall run with the Property; shall be binding upon all persons having or acquiring any interests in the Property or any part thereof; shall inure to the benefit of every portion of the Parcel and any interest therein; and shall inure to the benefit of and be binding upon each Owner and his respective successors in interest.

**ARTICLE 1  
DEFINITIONS**

1.1 General Definitions. Capitalized terms not otherwise defined in this Declaration shall have the meanings specified for such terms in the Arizona Condominium Act, A.R.S. § 33-1201, et seq., as amended from time to time.

1.2 Defined Terms. The following capitalized terms shall have the general meanings described in the Condominium Act and for purposes of this Declaration shall have the specific meanings set forth below:

1.2.1 “Articles” means the Articles of Incorporation of the Association, as amended from time to time.

1.2.2 “Assessments” means the Common Expense Assessments and Special Assessments levied and assessed against each Unit pursuant to Article 7 of this Declaration.

1.2.3 “Assessment Lien” means the lien granted to the Association by the Condominium Act to secure the payment of Assessments and related charges owed to the Association.

1.2.4 “Association” means The Boulders Casitas Condominium Association, an Arizona nonprofit corporation, its successors and assigns.

1.2.5 “Board of Directors” means the Board of Directors of the Association.

1.2.6 “Bylaws” means the Bylaws of the Association, as amended from time to time.

1.2.7 “City” means the City of Scottsdale, Arizona, a municipal corporation, its successors and assigns.

1.2.8 “Common Elements” means all portions of the Condominium other than the Units.

1.2.9 “Common Expenses” means expenditures made by or financial liabilities of the Association, together with any allocations to reserves.

1.2.10 “Common Expense Assessment” means the assessment levied against the Units pursuant to Section 7.2 of this Declaration.

1.2.11 “Common Expense Liability” means the liability for Common Expenses allocated to each Unit by this Declaration.

1.2.12 “Condominium” means the real property located in Maricopa County, Arizona, which is described in Exhibit A attached to this Declaration, together with all Dwellings and other Improvements located thereon.

1.2.13 “Condominium Act” means the Arizona Condominium Act, A.R.S. §33-1201, et seq., as amended from time to time.

1.2.14 “Condominium Documents” means this Declaration, the Articles, Bylaws and Rules, as they may be amended from time to time.

1.2.15 “Declarant Party” or “Declarant Parties” means collectively Declarant, its members and the affiliates and subsidiaries of Declarant and its members, the officers, directors

and employees of all of the foregoing, and as to Section 11.20 of this Declaration, to the extent such Persons agree to be bound by Section 11.20, any contractors, subcontractors, suppliers, architects, engineers, brokers and any other Person providing materials or services in connection with the construction of any Improvement upon or benefiting the Condominium.

1.2.16 “Declaration” means this Amended and Restated Condominium Declaration, as amended from time to time.

1.2.17 “Dwelling” means the single-family residential dwelling built upon a Unit.

1.2.18 “Easement and Operating Agreement” means the Easement and Operating Agreement for the Boulders Casitas dated as of April 13, 2004 and Recorded on April 13, 2004 as Document No. 2004-0390591, as amended and supplemented from time to time.

1.2.19 “First Mortgage” means any mortgage, deed of trust or contract for sale pursuant to the provisions of A.R.S. § 33-741 et seq. on a Unit that has first priority over all other mortgages, deeds of trust and contracts for sale on the same Unit.

1.2.20 “First Mortgagee” means the holder of any First Mortgage.

1.2.21 “Golf Course Easement Agreement” means the Golf Course Easement Agreement dated as of March 17, 2004 and Recorded on April 13, 2004 as Document No. 2004-0390592, as amended and supplemented from time to time.

1.2.22 “Improvement” means any physical building, structure, fixture or facility existing or constructed, placed, erected or installed on the land included in the Condominium, including Dwellings, private drives, parking areas, walkways, pools, spas, paving, fences, walls, monument signs, gates, hedges, plants, trees and shrubs of every type and kind.

1.2.23 “Limited Common Elements” means a portion of the Common Elements specifically designated in this Declaration or on the Plat as a Limited Common Element and allocated by this Declaration or by operation of the Condominium Act for the exclusive use of one or more but fewer than all of the Units.

1.2.24 “Maintenance Standard” means the standard of maintenance of Improvements established from time to time by the Board of Directors, which standard shall be equal to or better than the standard established by the Master Association throughout the Master Community.

1.2.25 “Master Association” means Owners Association of Boulders Scottsdale, an Arizona nonprofit corporation, its successors and assigns.

1.2.26 “Master Community” means the master planned residential, commercial, hotel and recreational development known as “The Boulders” lying within the City of Scottsdale, Arizona, as more particularly described in the Master Declaration.

1.2.27 “Master Declarant” means Boulders Joint Venture, an Arizona general partnership, and the successors and assigns of the Master Declarant’s rights and powers under the Master Declaration.

1.2.28 “Master Declaration” means the Amended and Restated Declaration of Covenants, Conditions and Restrictions of Owners Association of Boulders Scottsdale Recorded on August 24, 2012, in Document No. 2012-0761243, as may be amended and supplemented from time to time.

1.2.29 “Master Governing Documents” means collectively the Master Declaration, the Articles of Incorporation and Bylaws of the Master Association and the rules, regulations and design guidelines adopted by the Master Association, all as may be amended and supplemented from time to time.

1.2.30 “Member” means any Person who is or becomes a member of the Association.

1.2.31 “Person” means a natural person, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.

1.2.32 “Plat” means the Amended and Restated Condominium Plat of the Boulders Casitas, which plat has been Recorded in Book 679 of Maps, page 18, and any amendments, supplements or corrections thereto.

1.2.33 “Recording” means placing an instrument of public record in the Official Records of Maricopa County Recorder, Maricopa County, Arizona, and “Recorded” means having been so placed of public record.

1.2.34 “Reserve Contribution” means the sum deposited in the Reserve Account by each Person as set forth in Section 7.10 of this Declaration.

1.2.35 “Rules” means the rules and regulations adopted by the Association, as amended from time to time.

1.2.36 “Special Assessment” means any assessment levied and assessed pursuant to Section 7.3 of this Declaration.

1.2.37 “Unit” means a portion of the Condominium designated for separate ownership or occupancy, the boundaries of which are described in Section 2.5 of this Declaration.

1.2.38 “Unit Owner” means the Record owner, whether one or more Persons, of beneficial or equitable title (and legal title if the same has merged with the beneficial or equitable title) to the fee simple interest of a Unit. Unit Owner shall not include Persons having an interest in a Unit merely as security for the performance of an obligation, or a lessee or tenant of a Unit.

Unit Owner shall include a purchaser under a contract for the conveyance of real property, a contract for deed, a contract to convey, an agreement for sale or any similar contract subject to A.R.S. § 33-741, et seq. Unit Owner shall not include a purchaser under a purchase contract and receipt, escrow instructions or similar executory contracts which are intended to control the rights and obligations of the parties to executory contracts pending the closing of a sale or purchase transaction. In the case of Units the fee simple title to which is vested in a trustee pursuant to A.R.S. § 33-801, et seq., the trustor shall be deemed to be the Unit Owner. In the case of Units the fee simple title to which is vested in a trustee pursuant to a subdivision trust agreement or similar agreement, the beneficiary of any such trust who is entitled to possession of the Unit shall be deemed to be the Unit Owner.

1.2.39 “Visible From Neighboring Property” means, with respect to any given object, that such object is or would be visible to a person six (6) feet tall, standing at ground level on any part of an adjoining Unit, Common Element, Limited Common Element or other property.

## **ARTICLE 2**

### **SUBMISSION OF PROPERTY; UNIT BOUNDARIES; ALLOCATION OF PERCENTAGE INTERESTS, VOTES AND COMMON EXPENSE LIABILITIES**

2.1 Submission of Property. All of the real property described on Exhibit A attached to this Declaration, together with all Improvements situated thereon and all easements, rights and appurtenances thereto, have been submitted to the provisions of the Condominium Act for the purpose of creating a condominium in accordance with the provisions of the Condominium Act and the real property described on Exhibit A attached to this Declaration, together with all Improvements situated thereon, and all easements, rights and appurtenances thereto, shall be held and conveyed subject to the terms, covenants, conditions and restrictions set forth in this Declaration.

2.2 Name of Condominium. The name of the Condominium created by this Declaration is The Boulders Casitas, a condominium.

2.3 Name of Association. The name of the Association is The Boulders Casitas Condominium Association.

2.4 Identifying Numbers of Units. The identifying numbers of the Units are 1 through 26, inclusive.

2.5 Unit Boundaries. The horizontal boundaries of each Unit are shown on the Plat. The vertical boundaries begin fifteen (15) feet below the approved engineered finished floor elevation and extend twenty-two (22) feet above the approved engineered finished floor elevation as shown on the Plat.

2.6 Allocation of Common Element Interest and Common Expense Liabilities. The undivided interests in the Common Elements and in the Common Expenses of the Association shall be allocated equally among the Units. Accordingly, the undivided interest in the Common

Elements and in the Common Expenses of the Association for each Unit shall be 1/26. In the event the number of Units is changed for any reason, the undivided interests shall be reallocated so that each Unit's undivided interest shall be a fraction, the numerator of which is one (1) and the denominator of which is the total number of Units then subject to this Declaration.

2.7 Allocation of Votes in the Association. The total votes in the Association shall be equal to the number of Units. The votes in the Association shall be allocated equally among all the Units with each Unit having one (1) vote.

2.8 Allocation of Limited Common Elements.

2.8.1 Limited Common Elements 1 through 14, inclusive, are shown on the Plat. Each Limited Common Element is allocated to the Units contiguous thereto, except that Limited Common Element 3 is allocated solely to Unit 5 and Limited Common Element 4 is allocated solely to Unit 6.

2.8.2 A Limited Common Element may be allocated or reallocated by an amendment to this Declaration made in accordance with the provisions of A.R.S. § 33-1218(B) and (C) of the Condominium Act.

2.8.3 The Board of Directors shall have the right, without a vote of the Members, to allocate as a Limited Common Element any portion of the Common Elements not previously allocated as a Limited Common Element. Any such allocation by the Board of Directors shall be made by an amendment to this Declaration and an amendment to the Plat if required by the Condominium Act.

### **ARTICLE 3 EASEMENTS**

3.1 Utility Easement. There is hereby created an easement upon, across, over and under the Common Elements for reasonable ingress, egress, installation, replacing, repairing or maintaining of all utilities, including water, sewer, natural gas, telephone, cable television and electricity. By virtue of this easement, it shall be expressly permissible for the providing utility company to erect and maintain the necessary equipment on the Common Elements, but no sewers, electrical lines, water lines, gas lines or other utility or service lines may be installed or located on the Common Elements except as initially designed, approved and constructed by the Declarant or as approved by the Board of Directors. This easement shall in no way affect any other Recorded easements on the Common Elements.

3.2 Easements for Ingress, Egress and Nature Trail.

3.2.1 Subject to and in common with the rights of other Persons as set forth in Subsections 3.2.2 and 3.2.3 of this Declaration, there is created an easement for ingress and egress for pedestrian and vehicular traffic over, through and across streets as from time to time may be paved and located upon the Common Elements and intended for such purposes, except that such easements shall not extend to any Limited Common Elements. Subject to and in

common with the rights of other Persons as set forth in Subsection 3.2.4 of this Declaration, there are hereby created easements for ingress and egress for pedestrian traffic over, through and across sidewalks, paths, walks, trails and lanes that from time to time may exist upon the Common Elements. Such easements shall run in favor of and be for the benefit of the Unit Owners and residents of the Units and their guests, invitees, employees and contractors.

3.2.2 Pursuant to the Plat and the Master Declaration, the owners and members of the Master Association and their guests, invitees, employees and contractors have a perpetual non-exclusive easement for ingress and egress over the streets known as Casitas Way, Casitas Circle South and Clubhouse Drive, all as shown on the Plat.

3.2.3 Pursuant to the Easement and Operating Agreement, the Master Declarant, for its use and the use of the employees, agents, contractors, customers, visitors, invitees, licensees, tenants, subtenants and concessionaires of Master Declarant, has a perpetual, non-exclusive easement upon, over, across and under the street known as Clubhouse Drive, as shown on the Plat, for the purposes of (i) vehicular and pedestrian ingress, egress and access to and from the Resort and the Owner Tract, as such terms are defined in the Easement and Operating Agreement, and (ii) the construction, maintenance, installation, repair and/or replacement of utilities and/or roadways. The use of Clubhouse Drive by Unit Owners, residents of the Units and their guests, invitees, employees and contractors is subject to the covenants, conditions and restrictions set forth in the Easement and Operating Agreement.

3.2.4 Declarant has granted to (i) the Master Declarant, for its use and the use of the employees, customers, visitors, invitees, licensees, agents and contractors of Master Declarant, (ii) the Master Association and the owners and members of the Master Association and their family members, guests and invitees, and (iii) all Unit Owners and their family members, guests and invitees, an easement for ingress and egress for pedestrian traffic over, through and across a portion of the Common Elements (the "Nature Trail Area") located within the Common Elements north of Clubhouse Drive from the western boundary of the Condominium to the eastern boundary of the Condominium and north of Units 1 through 5, inclusive, as shown on the Plat. To this end, the Nature Trail Easement Agreement was Recorded on February 11, 2005 at Document No. 2005-0176836, official records of the Maricopa County, Arizona Recorder (the "Nature Trail Easement Agreement"). Each Unit Owner shall take title to a Unit and the allocated interest in the Common Elements subject to the Nature Trail Easement Agreement. The responsibility for maintaining, repairing and replacing the Nature Trail Area, including all Improvements constructed thereon, and for establishing and enforcing rules and regulations with respect to the use and enjoyment of the Nature Trail Area shall be as set forth in the Nature Trail Easement Agreement. Any Person accepting a deed or acquiring any ownership interest in any of Units 1 through 5 acknowledges and agrees that the Nature Trail Area is in close proximity to such Units and that the use and maintenance of the Nature Trail Area may create noise, dust and infringe upon the privacy of the Unit Owners and residents of such Units. Except as set forth in the Nature Trail Easement, neither the Master Declarant, the Declarant Parties, the Association, the Master Association nor any director, officer, agent or employee of any of the foregoing, shall be liable to any Unit Owner, resident or his family, invitees or licensees for any claims or damages resulting, directly or indirectly, from the operation, existence or maintenance of the Nature Trail Area.

3.3 Exclusive Parking Easement. Pursuant to and subject to the terms of the Easement and Operating Agreement, the Master Declarant, for its use and the use of the employees, agents, contractors, customers, visitors, invitees, licensees, tenants, subtenants and concessionaires of Master Declarant, has a perpetual exclusive easement upon, over, across and under a portion of the Common Elements identified on the Plat as “Parking Easement” (the “Parking Easement Area”) for the purposes of (i) vehicular and pedestrian ingress, egress, access and parking of vehicles, in such configuration as determined by Master Declarant, in its sole discretion, so long as in compliance with all rules and regulations of applicable governmental entities, and (ii) the construction, maintenance, installation, repair and/or replacement of utilities and/or parking areas, including the right to build a fence to provide exclusive use by Master Declarant and the permittees of Master Declarant as set forth in this Section. The use of the Parking Easement Area by Unit Owners, residents of the Units and their guests, invitees, employees and contractors is prohibited unless such use is authorized by Master Declarant.

3.4 Unit Owners’ Easements of Enjoyment.

3.4.1 Every Unit Owner shall have a right and easement of enjoyment in and to the Common Elements, which right and easement shall be appurtenant to and shall pass with the title to every Unit, subject to the following provisions:

(i) The rights of other Persons to use the Common Elements as set forth in Sections 3.2 and 3.3 of this Declaration;

(ii) The right of the Association to adopt reasonable rules and regulations governing the use of the Common Elements;

(iii) The right of the Association to convey the Common Elements or subject the Common Elements to a mortgage, deed of trust, or other security interest, in the manner and subject to the limitations set forth in the Condominium Act;

(iv) All rights and easements set forth in this Declaration;

(v) The right of the Association to suspend the right of a Unit Owner and any resident of such Unit Owner’s Unit to use the Common Elements (other than the right of a Unit Owner and any resident to use the streets that are part of the Common Elements for ingress and egress to the Unit Owner’s Unit) for reasonable time periods for a violation of any provision of the Condominium Documents by the Unit Owner, lessee or resident and/or their guests.

3.4.2 If a Unit is leased or rented, the lessee and persons residing with the lessee shall have the right to use the Common Elements during the term of the lease, and the Unit Owner shall have no right to use the Common Elements (other than the right of a Unit Owner to use the streets which are part of the Common Elements for ingress and egress to the Unit Owner’s Unit) until the termination or expiration of the lease.

3.4.3 The guests and invitees of any Unit Owner or other person entitled to use the Common Elements pursuant to Subsection 3.4.1 of this Declaration or of any lessee who is entitled to use the Common Elements pursuant to Subsection 3.4.2 of this Declaration may use the Common Elements provided they are accompanied by a Unit Owner, lessee or other person entitled to use the Common Elements pursuant to Subsection 3.4.1 or Subsection 3.4.2 of this Declaration. The Board of Directors shall have the right to limit the number of guests and invitees who may use the Common Elements at any one time and may restrict the use of the Common Elements by guests and invitees to certain specified times.

3.4.4 A Unit Owner's right and easement of enjoyment in and to the Common Elements shall not be conveyed, transferred, alienated or encumbered separate and apart from a Unit. Such right and easement of enjoyment in and to the Common Elements shall be deemed to be conveyed, transferred, alienated or encumbered upon the sale of any Unit, notwithstanding that the description in the instrument of conveyance, transfer, alienation or encumbrance may not refer to such right and easement.

3.4.5 The provisions of this Section 3.4 shall not apply to any of the Limited Common Elements that are allocated to one or more but less than all of the Units.

3.5 Easement Over Common Elements and Units in Favor of the Association. The Common Elements and Units (except for the interior of Dwellings) shall be subject to an easement in favor of the Association and the agents, employees and independent contractors of the Association for the purpose of exercising all rights of the Association and discharging all obligations of the Association, including the following:

3.5.1 for inspection, maintenance, repair and replacement of the Common Elements;

3.5.2 for inspection, maintenance, repair and replacement of those portions of the Units for which the Association has such responsibility pursuant to this Declaration;

3.5.3 for correction of emergency conditions on one or more Units or Limited Common Elements or casualties to the Common Elements, the Limited Common Elements or the Units;

3.5.4 for the purpose of enabling the Association, the Board of Directors or any other committees appointed by the Board of Directors to exercise and discharge their respective rights, powers and duties under the Condominium Documents; and

3.5.5 for inspection, at reasonable times and upon reasonable notice to the Unit Owner or a Unit Owner's lessee, of the Units and Limited Common Elements in order to verify that the provisions of the Condominium Documents are being complied with by the Unit Owner or such Unit Owner's lessees and their guests, invitees and other residents of the Unit.

3.6 Easement Over Limited Common Elements in Favor of Unit Owners. The Limited Common Elements are hereby made subject to easements in favor of the Unit Owners to

which such Limited Common Elements have been allocated for the purposes of (i) ingress and egress over the driveway serving the applicable Units, and (ii) for the performance of the Unit Owners' obligation to maintain, repair, replace and restore those portions of the Limited Common Elements that the Unit Owners are obligated to maintain under Section 5.3 of this Declaration.

3.7 Easement for Support. To the extent necessary, each Unit and all Common Elements shall have an easement for structural support over adjacent Units and Common Elements.

3.8 Easement for Unintended Encroachments. To the extent that any Improvement constructed on a Unit, Limited Common Element or Common Element encroaches on any other Unit, Limited Common Element or Common Element as a result of original construction, shifting or settling, or alteration or restoration authorized by this Declaration, or any reason other than the intentional encroachment on the Common Elements, Limited Common Element or any Unit by a Unit Owner, a valid easement for the encroachment, and for the maintenance thereof, exists.

3.9 Easement Rights and Other Rights. Notwithstanding anything contained in this Article 3 to the contrary, and subject to the provisions of Section 11.19, the rights of the Association and the rights and easements granted to Unit Owners in this Article 3 are subject to (i) the rights of the Master Declarant and the employees, agents, contractors, customers, visitors, invitees, licensees, tenants, subtenants and concessionaires of Master Declarant pursuant to the provisions of the Easement and Operating Agreement, and (ii) the rights of the Master Association, the owners and members of the Master Association and their guests, invitees, employees and contractors pursuant to the provisions of the Master Declaration.

## **ARTICLE 4 USE AND OCCUPANCY RESTRICTIONS**

4.1 Restrictions Imposed by Master Governing Documents; Obligation to Obtain Approvals.

4.1.1 All Improvements constructed on the Condominium and use of the Units within the Condominium shall be in accordance with the requirements of, and applicable limitations and restrictions set forth in, the Master Governing Documents. Certain provisions of this Article 4 are more restrictive than the provisions set forth in the Master Declaration, and Unit Owners shall be obligated to comply with any such provision that may be more restrictive than the provisions set forth in the Master Declaration. If, in the sole determination of the board of directors of the Master Association, any provision of this Article 4 conflicts with the Master Declaration or the rules, regulations or design guidelines established by the Master Association, or if any provision of this Article 4 is deemed to be less restrictive than the provisions set forth in the Master Declaration or in the rules, regulations or design guidelines established by the Master Association, the Master Declaration shall control and the provisions of this Article 4 shall be enforced the same as the more restrictive provision set forth in the Master Declaration or the rules, regulations and design guidelines established by the Master Association.

4.1.2 Unless otherwise set forth in this Article 4, wherever this Article 4 requires the approval or consent of the Board of Directors, such approval or consent shall not be deemed the approval or consent of the Master Association. Each Unit Owner acknowledges that the Master Governing Documents may require the approval or consent of the Master Association for certain actions, and that such approval or consent required by the Master Governing Documents shall be required in addition to any approval or consent obtained from the Association.

4.2 Residential Use. All Units shall be used, improved and devoted exclusively to residential use. No business or commercial building may be erected on any Unit and no gainful occupation, profession, trade or commercial enterprise or other non-residential use may be conducted on any part thereof, except that an Owner or other Occupant of a Unit may conduct a business activity within a Unit so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound, vibration or smell from outside the Unit; (b) the business activity conforms to all applicable zoning ordinances or requirements for the Condominium; (c) the business activity is conducted solely in the Unit; (d) the business activity does not involve persons coming to the Unit or the door-to-door solicitation of Unit Owners, Lessees or Occupants in the Condominium; and (e) the business activity is consistent with the residential character of the Condominium and does not constitute a nuisance or a hazardous or offensive use or threaten security or safety of other Unit Owners, Lessees or Occupants, as may be determined from time to time in the sole discretion of the Board of Directors. The terms "business" and "trade" as used in this Section shall be construed to have ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether: (a) such activity is engaged in full or part time; (b) such activity is intended or does generate a profit; or (c) a license is required for such activity. The leasing of a Unit by the Unit Owner thereof in accordance with the restrictions set forth in Section 4.29 hereof shall not be considered a trade or business within the meaning of this Section.

4.3 Nuisances; Construction Activities. No animal waste, rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Unit or Common Element, and no odors or loud noises shall be permitted to arise or emit therefrom so as to render any such property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to the residents of such other property. No other nuisance shall be permitted to exist or operate upon any Unit which is otherwise improper, detrimental or offensive, to any other property in the vicinity thereof or to the occupants of such other property. Normal construction activities and parking in connection with the building of Improvements on a Unit shall not be considered a nuisance or otherwise prohibited by this Declaration, but Units shall be kept in a neat and tidy condition during construction periods, trash and debris shall not be permitted to accumulate, and supplies of brick, block, lumber and other building materials will be piled only in such areas as may be approved in writing by the Board of Directors. In addition, any construction equipment and building materials stored or kept on any Unit during the construction of Improvements may be kept only